

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS

TEXT OF PROPOSED CHANGES UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
PURSUANT TO NOTICE  
DATED: SEPTEMBER 14, 2006

1. Amend Section 260.140.8 to read:

260.140.8. Restrictions on Transfer.

(a) No open qualifications will be approved to issue securities if the transfer of the securities is subject to any restrictions imposed by the issuer's charter documents, indenture agreements or other instruments or agreements under which the securities are to be issued.

(b) Limited offering qualifications may be approved to issue securities subject to transfer restrictions if the restrictions do not unfairly prejudice the opportunity of the holder(s) to receive the fair value of the securities (Section 260.140.50).

(1) Provisions are presumptively reasonable when there is no third-party offeror and the holder(s) desires to sell, if the provisions base the price at which the issuer or other holder(s) may purchase the securities upon either: (A) an independent appraised value; or (B) the book value of the securities (unless the business is one where the book value is not a significant indication of value).

(2) Rights of first refusal in favor of the issuer or other holder(s) are presumptively reasonable if: (A) they apply only where there is a bona fide third-party offeror and the selling holder desires to sell the securities; (B) such right of first refusal requires the issuer or other holder(s) to make its election to purchase the securities subject to such right of first refusal, if at all, by giving notice of such election no more than 30 days after receipt of notice of such right of first refusal; and (C) upon such exercise, the issuer or other holder(s) exercising such right of first refusal must

purchase all (but not less than all, unless the selling holder consents) of the offered securities on the same terms offered by the bona fide third-party offeror, within 60 days after receipt of the notice described in clause (B) hereof, unless a longer period is offered by the bona fide third-party offeror.

(3) Provisions are not presumptively reasonable if they absolutely prohibit the transfer of securities or permit transfer only upon the consent of the issuer or the other holder(s), or give an option to the issuer or the other holder(s) to purchase regardless of the desire of the selling holder(s) to sell and will only be permitted when justified by the issuer, except as otherwise set forth in these rules, ~~as, for example, under Sections 260.140.41 and 260.140.42.~~

(4) Provisions giving an issuer the right to repurchase securities upon termination of employment are presumptively reasonable if the repurchase price:

(i) is not less than the fair market value of the securities to be repurchased on the date of termination of employment, and the right to repurchase will be exercised for cash or cancellation of purchase money indebtedness for the securities within 90 days of termination of employment (or in the case of securities issued upon exercise of options after the date of termination, within 90 days after the date of the exercise), and the right terminates when the issuer's securities become publicly traded; or

(ii) is at the original purchase price, provided that the right to repurchase at the original purchase price lapses at the rate of at least 20% of the securities per year over 5 years from the date the option is granted (without respect to the date the option was exercised or became exercisable) and the right to repurchase must be exercised for cash or cancellation of purchase money indebtedness for the securities within 90 days of termination of employment (or in the case of securities issued upon exercise of options after the date of termination, within 90 days after the date of the exercise). In addition to the restrictions set forth in clauses (i) and (ii), the securities held by an

officer, director, manager or consultant of the issuer or an affiliate of the issuer may be subject to additional or greater restrictions.

NOTE: Authority cited: ~~Section~~ Sections 25102, 25140, 25610, and 25612.5, Corporations Code. Reference: ~~Section~~ Sections 25102, 25110, 25140, 25610, and 25612.5, Corporations Code.

2. Amend Section 260.140.41 to read:

260.140.41. ~~Employee, Director, Manager and Consultant Options.~~  
Compensatory Option Plans.

Options granted to employees [including insurance agents who are employees for purposes of Rule 701(c) under the Securities Act of 1933, as amended (17 C.F.R. 230.701(c))], officers, directors, managers, advisors or consultants of the issuer ~~or any of its affiliates,~~ its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent as part of a compensatory benefit plan shall be pursuant to a plan or agreement that provides for all of the following:

(a) The total number, ~~or percentage as calculated in accordance with Section 260.140.45,~~ of securities (which may be expressed as a specific number of securities or as a percentage of the total number of securities outstanding from time to time) which may be issued and the persons eligible to receive options to purchase these securities.

(b) ~~An exercise price which is not less than 85% of the fair value (Section 260.140.50) of the underlying security at the time the option is granted, except that the price shall not be less than 110% of the fair value in the case of any person who owns securities possessing more than 10% of the total combined voting power (as defined in Section 194.5 of the Corporations Code in the case of a corporate issuer) of all classes of securities of the issuer or its parent or subsidiaries possessing voting power.~~

~~(e)~~ (b) An exercise period of not more than 120 months from the date the option is granted.

~~(d)~~ (c) The non-transferability of the options, provided that the plan or agreement may permit transferability by will, by the laws of descent and distribution, or as permitted by Rule 701 of the Securities Act of 1933, as amended (17 C.F.R. 230.701).

~~(e)~~ (d) The proportionate adjustment of the number of securities purchasable and the exercise price thereof under the option in the event of a stock split, reverse stock split, stock dividend, recapitalization, combination, reclassification or other distribution of the issuer's equity securities without the receipt of consideration by the issuer, of or on the issuer's class or series of securities underlying the option.

~~(f) The right to exercise at the rate of at least 20% per year over 5 years from the date the option is granted, subject to reasonable conditions such as continued employment. However, in the case of an option granted to officers, directors, managers or consultants of the issuer of the option or the issuer of the underlying security or any of its affiliates, the option may become fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the issuer of the option or the issuer of the underlying security or any of its affiliates.~~

~~(g)~~ (e) Unless employment is terminated for cause as defined by applicable law, the terms of the plan or option grant or a contract of employment, the right to exercise in the event of termination of employment, to the extent that the optionee is entitled to exercise on the date employment terminates, ~~as follows~~ continues until the earlier of the option expiration date or:

(1) At least 6 months from the date of termination if termination was caused by death or disability.

(2) At least 30 days from the date of termination if termination was caused by other than death or disability.

~~(h) (f)~~ A plan termination date of not more than 10 years from the date the plan is adopted or the date the plan is approved by the security holders, whichever is earlier, and an agreement termination date of not more than 10 years from the date the agreement is entered into or the date the agreement is approved by the security holders, whichever is earlier. Options must be granted within 10 years from the date the plan or agreement is adopted or the date the plan or agreement is approved by the issuer's security holders, whichever is earlier.

~~(i) (g)~~ The plan or agreement must be approved by a majority of the outstanding securities entitled to vote by the later of (1) within 12 months before or after the date the plan is adopted or the date the agreement is entered into- or (2) prior to the granting of any option under the plan or agreement in this state. Any option granted to any person in this state that is exercised before security holder approval is obtained must be rescinded if security holder approval is not obtained in the manner described in the preceding sentence ~~within 12 months before or after the plan is adopted or the agreement is entered into.~~ Such securities shall not be counted in determining whether such approval is obtained. A foreign private issuer, as defined by Rule 3b-4 of the Securities Exchange Act of 1934, as amended (17 C.F.R. 240.3b-4), shall not be required to comply with this subsection provided that the aggregate number of persons in this state granted options under all option plans and agreements and issued securities under all purchase and bonus plans and agreements does not exceed 35.

~~(j) (h)~~ Compliance with Section 260.140.46 of these rules regarding the information required to be received by security holders.

~~(k) If provisions give an issuer the right to repurchase securities upon termination of employment, the repurchase price will be presumptively reasonable if:~~

~~(1) it is not less than the fair market value of the securities to be repurchased on the date of termination of employment, and the right to repurchase must be exercised~~

~~for cash or cancellation of purchase money indebtedness for the securities within 90 days of termination of employment (or in the case of securities issued upon exercise of options after the date of termination, within 90 days after the date of the exercise), and the right terminates when the issuer's securities become publicly traded; or~~

~~(2) it is at the original purchase price, provided that the right to repurchase at the original purchase price lapses at the rate of at least 20% of the securities per year over 5 years from the date the option is granted (without respect to the date the option was exercised or became exercisable) and the right to repurchase must be exercised for cash or cancellation of purchase money indebtedness for the securities within 90 days of termination of employment (or in the case of securities issued upon exercise of options after the date of termination, within 90 days after the date of the exercise). In addition to the restrictions set forth in clauses (1) and (2), the securities held by an officer, director, manager or consultant of the issuer or an affiliate of the issuer may be subject to additional or greater restrictions.~~

~~(1) Compliance with Section 260.140.1 of these rules regarding the voting rights of common stock and similar equity securities.~~

NOTE: Authority cited: Section Sections 25102, 25140, 25610, and 25612.5, Corporations Code. Reference: Section Sections 25102, 25110, 25140, 25610, and 25612.5, Corporations Code.

3. Amend Section 260.140.42 to read:

260.140.42. Employee, Director, Manager and Consultant Purchases  
Compensatory Purchase or Bonus Plans Excluding Option Plans.

Securities (other than options) distributed or sold to employees [including insurance agents who are employees for purposes of Rule 701(c) under the Securities Act of 1933, as amended (17 C.F.R. 230.701)], officers, directors, managers, advisors

or consultants of the issuer ~~or any of its affiliates~~, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents as part of a compensatory benefit plan shall be pursuant to a plan or agreement that provides for all of the following:

(a) The total number of securities (which may be expressed as a specific number of securities or as a percentage of the total number of securities outstanding from time to time) which may be issued and the persons eligible to purchase securities under the plan or agreement.

~~(b) A purchase price of:~~

~~(1) At least 85% of the fair value (Section 260.140.50) of the security at the time the person is granted the right to purchase securities under the plan or agreement, or at the time the purchase is consummated; or~~

~~(2) At least 100% of the fair value (Section 260.140.50) of the security either at the time the person is granted the right to purchase securities under the plan or agreement, or at the time the purchase is consummated, in the case of any person who owns securities possessing more than 10% of the total combined voting power (as defined in Section 194.5 of the Corporations Code in the case of a corporate issuer) of all classes of securities of the issuer or its parent or subsidiaries possessing voting power.~~

~~(c) (b)~~ The nontransferability of the rights of any eligible person ~~employee's, director's, manager's or consultant's rights to acquire~~ purchase securities under the plan or agreement, provided that the plan or agreement may permit transfer of the rights to purchase securities by will, by the laws of descent and distribution, or as permitted by Rule 701 of the Securities Act of 1933, as amended (17 C.F.R. 230.701).

~~(d) (c)~~ The proportionate adjustment of the number of securities allocated to any eligible person ~~an employee, director, manager or consultant~~ under the plan or

agreement in the event of a stock split, reverse stock split, stock dividend, recapitalization, combination, reclassification or other distribution of the issuer's equity securities without the receipt of consideration by the issuer, of or on the issuer's class of securities subject to the purchase right.

~~(e)~~ (d) A plan or agreement termination date of not more than 10 years from the date the plan is approved by the security holders, whichever is earlier, and an agreement termination date of not more than 10 years from the date the agreement is entered into or the date the agreement is approved by the security holders, whichever is earlier. Securities must be issued within 10 years from the date the plan or agreement is adopted or the plan or agreement is approved by the issuer's security holders, whichever is earlier.

~~(f)~~ (e) The plan or agreement must be approved by a majority of the outstanding securities entitled to vote by the later of (1) within 12 months before or after the date the plan is adopted or the date the agreement is entered into- or (2) prior to the issuance of any security under the plan or agreement in this state. Any issuance of securities purchased before security holder approval is obtained must be rescinded if security holder approval is not obtained in the manner described in the preceding sentence within 12 months before or after the plan is adopted or the agreement is entered into. Such securities shall not be counted in determining whether such approval is obtained. A foreign private issuer, as defined by Rule 3b-4 of the Securities Exchange Act of 1934, as amended (17 C.F.R. 240.3b-4), shall not be required to comply with this subsection provided that the aggregate number of persons in this state granted options under all option plans and agreements and issued securities under all purchase and bonus plans and agreements does not exceed 35.

~~(g)~~ (f) Compliance with Section 260.140.46 of these rules regarding the information required to be received by security holders.



~~(h) If provisions give an issuer the right to repurchase securities upon termination of employment, the repurchase price will be presumptively reasonable if:~~

~~(1) it is not less than the fair market value of the securities to be repurchased on the date of termination of employment, and the right to repurchase must be exercised for cash or cancellation of purchase money indebtedness for the securities within 90 days of termination of employment, and the right terminates when the issuer's securities become publicly traded; or~~

~~(2) it is at the original purchase price, provided that the right to repurchase at the original purchase price lapses at the rate of at least 20% of the securities per year over 5 years from the date the option is granted (without respect to the date the option was exercised or became exercisable) and the right to repurchase must be exercised for cash or cancellation of purchase money indebtedness for the securities within 90 days of termination of employment. In addition to the restrictions set forth in clauses (1) and (2), the securities held by an officer, director, manager or consultant of the issuer or an affiliate of the issuer may be subject to additional or greater restrictions.~~

~~(i) Compliance with Section 260.140.1 of these rules regarding the voting rights of common stock and similar equity securities.~~

NOTE: Authority cited: ~~Section~~ Sections 25102, 25140, 25610, and 25612.5, Corporations Code. Reference: ~~Section~~ Sections 25102, 25110, 25140, 25610, and 25612.5, Corporations Code.

4. Amend Section 260.140.45 to read:

260.140.45. Limitation on Number of Securities.

(a) The total number of securities issuable upon exercise of all outstanding options [exclusive of rights described in Section 260.140.40 and warrants described in Sections 260.140.43 and 260.140.44 of these rules, and any purchase plan or

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agreement as described in Section 260.140.42 of these rules (provided that the purchase plan or agreement provides that all securities will have a purchase price of 100% of the fair value (Section 260.140.50) of the security either at the time the person is granted the right to purchase securities under the plan or agreement or at the time the purchase is consummated)], and the total number of securities called for under any bonus or similar plan or agreement shall not exceed a number of securities which is equal to 30% of the then outstanding securities of the issuer (convertible preferred or convertible senior common shares of stock will be counted on an as if converted basis), exclusive of securities subject to promotional waivers under Section 260.141, unless a percentage higher than 30% is approved by at least two-thirds of the outstanding securities entitled to vote.

(b) The 30% limitation set forth in this Rule, or such other percentage limitation as may be approved pursuant to this Rule, shall be deemed satisfied if the plan or agreement provides that at no time shall the total number of securities issuable upon exercise of all outstanding options and the total number of shares provided for under any stock bonus or similar plan or agreement of the issuer exceed the applicable percentage as calculated in accordance with the conditions and exclusions of this Rule, based on the securities of the issuer which are outstanding at the time the calculation is made.

(c) This section shall not apply to any plan or agreement that complies with all conditions of Rule 701 of the Securities Act of 1933, as amended (17 C.F.R. 230.701).

NOTE: Authority cited: ~~Section~~ Sections 25102, 25140, 25610, and 25612.5, Corporations Code. Reference: ~~Section~~ Sections 25102, 25110, 25140, 25610, and 25612.5, Corporations Code.

5. Amend Section 260.140.46 to read:

260.140.46. Information to Security Holders.

Plans or agreements pursuant to which securities are to be issued to employees, ~~officers, directors, managers, advisors or consultants, managers or directors~~ (including option, purchase and bonus plans) shall provide that the security holder(s) will receive financial statements at least annually. This section does not require the use of financial statements in accordance with Section 260.613 of these rules. This section shall not apply when issuance is limited to key persons ~~employees~~ whose duties in connection with the issuer assure them access to equivalent information. This section shall not apply to any plan or agreement that complies with all conditions of Rule 701 of the Securities Act of 1933, as amended (17 C.F.R. 230.701).

NOTE: Authority cited: ~~Section~~ Sections 25102, 25140, 25610, and 25612.5, Corporations Code. Reference: ~~Section~~ Sections 25102, 25110, 25140, 25610, and 25612.5, Corporations Code.

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